

§ 5.28

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the bureau shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 5.28 Referral of debts for offset.

(a) A bureau shall refer to the Service for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, only such past-due legally enforceable debts owed to the Department:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T, and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the Service a magnetic tape pursuant to § 5.27(c), together with an accompanying written certification to the Service by the bureau that the conditions or requirements specified in 26 CFR 301.6402-6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The bureau's certification shall be in the form specified in the MOU.

§ 5.29 Notice requirements before offset.

(a) The bureau must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the Service for offset against any refund of overpayment of tax;

(b) The bureau shall provide a toll free telephone number for use in obtaining information from the bureau concerning the offset.

(c) The bureau shall give the individual debtor at least sixty (60) days from the date of the notification to present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. The bureau shall

31 CFR Subtitle A (7-1-99 Edition)

consider the evidence presented by the individual and shall make a determination whether an amount of such debt is past-due and legally enforceable. For purposes of this subsection, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual shall bar referral of the debt to the Service.

(d) Notification given to a debtor pursuant to paragraphs (a), (b) and (c) of this section shall advise the debtor of how he or she may present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the bureau, and the determination required under paragraph (c) of this section has been made by an official or employee of the bureau, any unresolved dispute with the debtor as to whether all or part of the debt is past-due or legally enforceable must be referred to the bureau for ultimate administrative disposition, and the bureau must directly notify the debtor of its determination.

Subpart D—Administrative Offset

AUTHORITY: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

SOURCE: 52 FR 52, Jan. 2, 1987, unless otherwise noted.

§ 5.30 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with the Department, or where a request for an offset is received by the Department from another agency. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

[52 FR 52, Jan. 2, 1987, as amended at 53 FR 16703, May 11, 1988]